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sentence

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA, New York, N.Y.

5 v. 05 Cr. 202 (JGK)

6 DANIEL EGIPCIACO,

7 Defendant.  
-----x

8 September 4, 2019  
9 10:50 a.m.

10 Before:

11 HON. JOHN G. KOELTL,

12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN  
16 United States Attorney for the  
17 Southern District of New York  
BY: ANDREW DEMBER  
18 ADAM HOBSON  
19 Assistant United States Attorneys

20 FEDERAL DEFENDERS OF NEW YORK  
21 Attorneys for Defendant  
22 BY: PEGGY CROSS-GOLDENBERG

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1 (Case called)

2 THE DEPUTY CLERK: Will all parties please state who  
3 they are for the record.

4 MR. DEMBER: Your Honor, Andrew Dember for the  
5 government. Good morning, your Honor.

6 THE COURT: Good morning.

7 MS. CROSS-GOLDENBERG: And the Federal Defenders of  
8 New York by Peggy Cross-Goldenberg with Mr. Egipciaco. Good  
9 morning, your Honor.

10 THE COURT: Good morning. Please, have a seat.

11 I have received the parties' correspondence including  
12 the government's letter dated August 27th, 2019, and the  
13 defense letter dated August 28, 2019. I signed the nolle pros  
14 for the defendant's prior felony information and I noted that  
15 it's already been picked up on the docket sheet. The  
16 government consents to the vacatur of Count Three of the  
17 indictment no. 05 crim 202. That leaves Counts One, Two, and  
18 Five. The parties agree that the guideline sentencing range is  
19 151 to 188 months' imprisonment. The government points out  
20 that there is a mandatory term of five years' supervised  
21 release on Count Two and a maximum of three years' supervised  
22 release on Counts One and Five. There is also a mandatory  
23 minimum sentence of 10 years on Count Two which is the drug  
24 conspiracy but that's academic in a way because the defendant  
25 has already spent more than 10 years' imprisonment. So, today

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1 is for resentencing on Counts One, Two, and Five. I will  
2 listen to all of the parties as I always do at a sentencing but  
3 I think I will begin -- I will call on -- I always do defense,  
4 counsel, defendant, and then the government but, and I will do  
5 that but I will start by calling on the government for anything  
6 that the government wants to say since some of this was at the  
7 instance of the government.

8 Mr. Dember, good to see you again.

9 MR. DEMBER: Good to see you, your Honor.

10 According to my calculations, your Honor, and I may be  
11 off by a number of weeks, maybe a month, Mr. Egipciaco has  
12 spent and served 174 months in prison. If one would calculate  
13 good time on his behalf, which I believe from  
14 Ms. Cross-Goldenberg's submissions he certainly earned, he has  
15 completed even the very top range in what is the agreed upon  
16 sentencing range in this case.

17 The reason the government, as opposed to defense  
18 counsel didn't submit anything in terms of sentencing other  
19 than the letters and the agreed upon guideline range, is  
20 because, frankly, there is not much else to add to this case.  
21 Your Honor knows the case well. Your Honor presided over the  
22 trial, presided over the original sentencing, over post-trial  
23 motions, and obviously made clear its view on the case and the  
24 sentencing options that was left to the Court. We certainly  
25 believe the range that is agreed upon is a reasonable range and

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1 the sentence within that range would have been or will be  
2 reasonable, and in light of the fact that the defendant has  
3 served essentially the top of that range there is really  
4 nothing else to say. I believe he has served his time in this  
5 case, your Honor.

6 THE COURT: Well, I will make some remarks later but  
7 it was to the government's credit that the government finally  
8 vacated the prior felony information.

9 MR. DEMBER: Yes, your Honor. And that, obviously,  
10 was triggered by the Davis case which obviously invalidated,  
11 first, Count Three of the -- the firearms count -- one of the  
12 two firearms counts that Mr. Egipciaco was convicted of and  
13 with that happening, your Honor, it required, in the  
14 government's view, a plenary resentencing in this case. And,  
15 as is reflected in our application or our submission of the  
16 nolle pros, the U.S. Attorney in this district considered all  
17 the facts and circumstances as they now exist including  
18 obviously Mr. Egipciaco's history and the time he has served  
19 and what he has done during that time and concluded that the  
20 original filing of that prior felony information was no longer  
21 needed in a resentencing, it was no longer required in the  
22 interest of justice and under those circumstances, your Honor,  
23 we find ourselves here where we see that Mr. Egipciaco has  
24 essentially served, essentially, the top of the guideline range  
25 that applies to him and has done his time.

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1                   THE COURT: Okay. It's particularly gratifying to  
2 hear that from such a senior person from the U.S. Attorney's  
3 office, so thank you.

4                   Now, a technical legal question. A sentence of  
5 time-served on all three counts would include time-served on  
6 the firearms count but time-served is actually in excess of the  
7 maximum. Nevertheless, it would seem to me that that would be  
8 the appropriate sentence, in particular, because if I were to  
9 sentence the defendant to a term of years on the firearms  
10 count, that would lead the Bureau of Prisons or marshal service  
11 to make calculations and might otherwise delay the defendant's  
12 release.

13                   Do you agree?

14                   MR. DEMBER: That sounds correct to me, your Honor.  
15 Yes, I do.

16                   THE COURT: Okay. The marshals are nodding their  
17 heads. Thank you.

18                   So, now I will listen to Ms. Cross-Goldenberg for  
19 anything you wish to tell me in connection with resentencing.

20                   MS. CROSS-GOLDENBERG: Thank you, your Honor. We are  
21 very happy to be here as well.

22                   Coincidentally, I just dropped my daughter off for her  
23 first year of pre-K-4 this week and I say that because I  
24 started working on Mr. Egipciaco's case the day I got back from  
25 maternity leave in August of 2015. The Court appointed the

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1       Federal Defenders to work on Mr. Egipciaco's case when he made  
2       a pro se motion for a reduction in sentence for a drug minus  
3       two resentencing. He obviously was not eligible for that  
4       because the Court already sentenced him to the mandatory  
5       minimum but the Court asked us to get involved and since then,  
6       for the past four years, we have been asking, begging,  
7       pleading, convincing -- finally -- the U.S. Attorney's office  
8       to hear the Court's requests to do something to ameliorate the  
9       sentence in this case.

10           Obviously, as Mr. Dember said, the Court knows this  
11       case much better than either counsel does because we weren't  
12       here for the trial and the original sentencing, but it was  
13       clear that even then the Court felt that something should be  
14       done about the sentencing options that were available to the  
15       Court.

16           THE COURT: Indeed, I asked the assistants to take it  
17       up with supervisors.

18           MS. CROSS-GOLDENBERG: Exactly. And even in denying,  
19       as it had to, the drug minus 2 resentencing the Court, citing  
20       the Holloway decision, requested that the U.S. Attorney's  
21       office consider exercising its discretion to do something in  
22       this case and since then we have been going back and forth and  
23       back and forth trying to get to this day and we are very  
24       grateful that we are finally here.

25           You know, there is a lot about this case that stands

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1 out as an example of some of the worst impacts of mandatory  
2 minimum sentencing. Mr. Egipciaco, when the Court first met  
3 him, was a 24-year-old man who had never been sentenced to  
4 prison, had never served time in jail, and the Court was  
5 required to give him the 25 years. He made a mistake, for  
6 sure, but 25 years for a first-time jail sentence, and when you  
7 throw in all the factors like the informant manipulation of the  
8 drug amount and other facts of the case that impacted the  
9 mandatory minimums, the sort of trial penalty prior felony  
10 information practice, a lot of these things that, to its  
11 credit, the U.S. Attorney's office no longer does. And, a lot  
12 of sentencing policy that has changed in the past 15 years  
13 because of some of the things we see in this case. And so, I'm  
14 grateful that we are here and we can actually do something  
15 about it Mr. Egipciaco's case but we don't want to focus on the  
16 negatives and the bad things that have happened for the past 14  
17 years. I just want to take a little bit of time to talk about  
18 the positives. And I know the Court has read our submissions  
19 over the past few years and --

20 THE COURT: You know, I will just add, I couldn't  
21 agree more that it would be counter-productive for the  
22 defendant to think about the negatives rather than the  
23 positives. I still remember the original presentence report in  
24 this case which said that the defendant was a person of great  
25 talent and promise but seems to have taken a wrong turn and,

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1 indeed, the original Criminal History Category in the case was  
2 III, the defendant did not come to the case, as suggested in  
3 one of the pieces of correspondence, with a situation in which  
4 the defendant did no wrong. It was not a case where the  
5 government simply picked someone out and proceeded with a  
6 prosecution that had no basis. There was a trial and there was  
7 a sentence and a co-defendant who was sentenced to a sentence  
8 that was over 10 years. So, it would be wrong for the  
9 defendant to, and there were then the problems of the sentence  
10 which the Court has spoken about on several occasions, but it  
11 is wrong for the defendant to think about the negatives rather  
12 than the positives including the reduction that the government  
13 agreed to and where the defendant goes from here.

14 So, because you had said something that triggered my  
15 own thoughts I interrupted you.

16 MS. CROSS-GOLDENBERG: That's okay. That's exactly my  
17 point, your Honor. And I think one of the things that is  
18 amazing about Mr. Egipciaco is that that's right on in terms of  
19 the dark place that he was at the time, the wrong turn he had  
20 taken and, truthfully, that time between conviction and  
21 sentencing which was a long time because the Court had  
22 requested the review and all of that, was a very, very dark  
23 time for him. And the fact that he was able, as a 24 or  
24 25-year-old, after being sentenced to jail until he was almost  
25 50, right, the fact that he could still look toward the future

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1 on the outside and focus on bettering himself not just making  
2 his day-to-day life while he was incarcerated easier but  
3 everything he did was about *How is this going to help me be*  
4 *better when I get out? How is this going to help me get a job*  
5 *when I get out?* How many people who are in the middle of a  
6 25-year bid do you see that have their résumé prepared and  
7 ready to go. Right? That was one of the attachments to the  
8 sentencing letter.

9                   And he hasn't just looked at what he can do to make  
10 things better for him, right? It has always been how can he  
11 serve? How can he help other individuals who are in his  
12 position? How can he help other young men who are in the  
13 position he was in back in 2015 stay out of prison? And it's  
14 been remarkable. I mean, he talks in that interview that was  
15 transcribed that I attached as Exhibit A to my letter about the  
16 transition, right, and how some people never come to that  
17 transition point, they can't think about their life on the  
18 outside, they can't prepare themselves for; I have to put the  
19 past in the past, I have to take the bad and focus on what I  
20 can do from here. There are lots of people who probably work  
21 in this building who are unable to do that, right, look at the  
22 problems in their life and focus on what they can do to control  
23 their future and the fact that he has been able to do that for  
24 the past 14 years not knowing if he was going to be out for  
25 another couple decades, has truly been remarkable. And I

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1 think, you know, I think not because of the problems with the  
2 original sentencing scheme, not because of what has happened in  
3 the law or anything like that, but I think just looking at his  
4 prison record and just seeing -- I mean, to go 15 years without  
5 getting a single shot, a single writeup, that's hard to do,  
6 even if you are perfect, to just not be in the wrong place at  
7 the wrong time. But the focus that he has had, he never lost  
8 faith in himself, he never lost faith in his family. I think  
9 we can all feel good about him starting this new chapter in his  
10 life getting out and starting over.

11 I apologize and I should have done this at the  
12 beginning, your Honor but his mother Alida and his brother  
13 Reinaldo Egipciaco, who the Court has heard from -- has heard  
14 from in writing and may even recognize from past proceedings,  
15 are here.

16 THE COURT: Yes. I recognize the defendant's mother.

17 MS. CROSS-GOLDENBERG: I just want to say one -- and  
18 this I know these are technical legal issues and I don't want  
19 to get bogged down in those sorts of technicalities. I would  
20 ask the Court to impose the sentence of 10 years because a  
21 sentence of time-served, while it might get him out a couple  
22 hours earlier, I think the BOP has run its calculations, they  
23 know that he has that time in and it's going to be on his  
24 record what his sentence was. And I think to the extent that  
25 10 years is the mandatory minimum, I think that's the right

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1 sentence in this case as opposed to a sentence that turns out  
2 to be 175 or 200 months, which could be interpreted as the  
3 Court thinking that -- not just that that's when he was here  
4 but that that's what the conduct called for.

5 THE COURT: The marshals are vigorously shaking their  
6 head.

7 THE MARSHAL: Your Honor?

8 THE COURT: And so, rather than having to interpret  
9 gestures.

10 THE MARSHAL: If the goal is to have the defendant  
11 walk out today the order would have to say time-served. If you  
12 put the 10 year mark on he would have to go back to BOP, they  
13 would do the calculation, and they would determine when they  
14 release him. If your order says time-served he goes back  
15 downstairs, we run him, determine that he has no warrants  
16 because he has been in custody, and then we cut him loose to his  
17 family at the front door.

18 THE COURT: That's what I thought.

19 THE MARSHAL: If you do do the 10 years I have no  
20 option because he doesn't belong to the marshal's office, he  
21 belongs to BOP, I have to send him back.

22 THE COURT: Doesn't the BOP do their calculations at  
23 another place?

24 THE MARSHAL: So he will go there and once the  
25 calculations are done, then they'll be transferred via the

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1 computer system and then he would be released. I don't know  
2 the time frame because I'm not a BOP employee, I just know it  
3 would take more time if that's the route that you determine for  
4 him.

5 THE COURT: Thank you.

6 It is hard for me to believe that a sentence of  
7 time-served would be more detrimental to the defendant for the  
8 defendant's record than a sentence of 10 years, 10 years, five  
9 years, to be served concurrently.

10 MS. CROSS-GOLDENBERG: I understand, your Honor. Like  
11 I said, it is a legal technicality. I don't want to get bogged  
12 down in there. Obviously, if the Court sentences Mr. Egipciaco  
13 to time-served hopefully everybody in this room but certainly I  
14 know four of us are going to be very happy.

15 I know he has a couple things he wants to say.

16 THE COURT: Oh, sure. I will call on the defendant.

17 MS. CROSS-GOLDENBERG: And I just want to thank the  
18 Court again for appointing our office four years ago and  
19 allowing us to fight for him and to continue to bring to light  
20 his amazing record and hopefully to walk him out of here today.

21 Thank you, your Honor.

22 THE COURT: Mr. Egipciaco, I will recognize you for  
23 anything you want to tell me, anything you would like to say.

24 THE DEFENDANT: Yes, your Honor.

25 I want to start off by thanking my family, my mother

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1 and brother who are in court today here with me, even the  
2 family members that supported me that weren't able to make it  
3 to court today for holding me down throughout this long, tough  
4 journey that I have been through. I want to thank your Honor  
5 for consistently requesting that the government look at the  
6 circumstances of the case and the characteristics of the  
7 individual and consider its discretion to give the Court some  
8 more discretion rather than the mandatory minimum, and I want  
9 to thank Mr. Dember for being the one from the government to  
10 finally see that the circumstances of the case and the  
11 characteristics of the individual were deserving of this relief  
12 and this opportunity to potentially be walking out this door  
13 and be reunited with my family.

14 It has been a long journey and I have managed to stay  
15 focused, like the Court and my lawyer was saying earlier, on  
16 the future. I didn't get caught up with the sentence that I  
17 had, as hard as it was and as many times as things seemed  
18 bleak, I just continued to prepare myself for the inevitable  
19 day that I would be released around people who were doing life  
20 and were never going to see the light of day. So, I guess that  
21 kind of sort of inspired me, the fact that knowing that as far  
22 along as my sentence was that I had to do, I was going to see  
23 the light of day and I would have to be prepared to reintegrate  
24 into society and be a productive member of society. So, that's  
25 pretty much what I focused on.

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1           I want to thank the Courts for taking into  
2 consideration all the letters of support and potential  
3 employment opportunities that I have received throughout the  
4 years, the circumstances of my case and cases like it that have  
5 come to light since across the country, and just all the other  
6 factors that come into play when considering to reimpose the  
7 sentence. If granted the blessed opportunity of getting  
8 time-served and walking out these doors today, I am prepared to  
9 go out there and live a righteous, productive life and continue  
10 my work with the Young Men Incorporated program and mentoring  
11 the youth so that they don't have to experience the things that  
12 I experienced.

13           I thank the Court for giving me the opportunity to  
14 speak and I pray that today will be the first day of a new  
15 chapter of my life.

16           THE COURT: Thank you, Mr. Egipciaco.

17           I said I would call on the government again if there  
18 is anything the government wants to tell me.

19           MR. DEMBER: No, your Honor. I don't believe there is  
20 anything else to add.

21           Thank you.

22           THE COURT: The parties have agreed to dispense with a  
23 presentence report.

24           Based on the submissions, I conclude that under the  
25 current guidelines the total offense level is 32, the Criminal

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1 History Category is III, and the guideline sentencing range is  
2 151 to 188 months. I appreciate that the guidelines are only  
3 advisory and that the Court must consider the various  
4 sentencing factors in 18 U.S.C Section 3553(a) and impose a  
5 sentence that is sufficient but no greater than necessary to  
6 comply with the purposes set forth in Section 3553(a)(2).

7 In this case the Court has made its views known on a  
8 number of occasions. The Court pleaded with the government not  
9 to tie the Court's hands with respect to the original sentence  
10 with the mandatory minimums that resulted in a sentence that  
11 was too long but that the Court could not do anything about.  
12 The Court subsequently asked the government again to reconsider  
13 the sentence. The Supreme Court has now changed the law and  
14 that led to vacating one of the counts of conviction. The  
15 government, to its great credit, used the opportunity to nolle  
16 pros the prior felony information leading to a drastic  
17 reduction in the mandatory minimum sentence.

18 The defendant now faces a guideline sentencing range  
19 where the time he has served fits approximately in that range.  
20 For the reasons that the Court noted in its original sentence,  
21 the Court would have varied from the guideline sentencing range  
22 even further but it will certainly be sufficient for the Court  
23 to sentence the defendant to time-served, a sentence within the  
24 guideline sentencing range. To alleviate defense counsel's  
25 concern, the Court will make it clear in the judgment that the

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1 sentence is time-served on all three counts to run  
2 concurrently, but the Court would have imposed a lower sentence  
3 except for the fact that the Court wanted to assure that the  
4 defendant is released promptly.

5 As I said earlier in this proceeding, my hope is that  
6 the defendant will use these events as a source for a new  
7 beginning. The defendant, plainly, was not in a good place at  
8 the time of the original events that led to his conviction.  
9 Nevertheless, it is clear that the defendant has enormous  
10 potential -- he is articulate, talented, should never sell  
11 himself short. It is my hope that he will use those talents to  
12 succeed with the great help of his family. I am particularly  
13 grateful to the defendant's mother who stood behind the  
14 defendant throughout all of these years.

15 I should add that there will be a period of supervised  
16 release and that any violation of the conditions of supervised  
17 release will come back before me. I profoundly hope that the  
18 defendant does not violate the terms of supervised release and  
19 that I do not see the defendant again. I will have a vivid  
20 recollection of all of these proceedings and so, again, to  
21 reiterate, I hope that the defendant never violates the terms  
22 of supervised release including that the defendant will not  
23 violate any provisions of state or local law or federal law.  
24 So, on balance, in this case the Court intends to impose a  
25 sentence of time-served on Counts One, Two, and Five, all to

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1 run concurrently. Imprisonment is to be followed by a  
2 five-year term of supervised release on Count Two, and a  
3 three-year term of supervised release on Counts One and Five,  
4 all to run concurrently.

5 The conditions for supervised release will be the  
6 current mandatory conditions of supervised release and the  
7 current standard conditions of supervised release in this  
8 district.

9 Does the defendant need a condition of substance abuse  
10 treatment as a term of supervised release? It was a term of  
11 the original supervised release.

12 MS. CROSS-GOLDENBERG: I don't think so, your Honor,  
13 given the length of time on and his record in prison.

14 THE COURT: Do you want to consult with the defendant  
15 to ask if he wants such a term?

16 MS. CROSS-GOLDENBERG: No. I don't think so, your  
17 Honor.

18 THE COURT: Fine. I won't impose it.

19 MS. CROSS-GOLDENBERG: Yes.

20 THE COURT: I will not impose a fine because the  
21 defendant lacks the ability to pay a fine after taking into  
22 account the presentence report. I assume that the defendant  
23 has already paid his special assessment. I don't know what  
24 happens to the additional \$100 special assessment on the count  
25 that's been vacated.

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1 MS. CROSS-GOLDENBERG: I think he can get a refund,  
2 your Honor.

3 THE COURT: You can apply for any refund. It is  
4 certainly not part of the sentence, being resentenced on three  
5 counts and the special assessment has been, I assume, paid on  
6 those counts. The Court will not impose restitution because  
7 there is no victim under 18, U.S.C., Section 3663.

8 The sentence consistent with the factors in section  
9 3553(a) and is sufficient but no greater than necessary to  
10 comply with the purposes of Section 3553(a)(2).

11 I have explained the reasons for the sentence. Before  
12 I actually impose the sentence, anything further that defense  
13 counsel wants to say?

14 MS. CROSS-GOLDENBERG: No, your Honor.

15 THE COURT: Anything further that the defendant wants  
16 to say?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: Anything further from the government?

19 MR. DEMBER: No, your Honor.

20 THE COURT: Pursuant to the Sentencing Reform Act of  
21 1984, it is the judgment of this Court that the defendant,  
22 Daniel Egipciaco, is hereby committed to the custody of the  
23 Bureau of Prisons to be imprisoned for a term of time-served on  
24 Counts One, Two, and Five, all to run concurrently. I will  
25 note on the judgment that the Court would have varied

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1 downwardly to a lesser sentence were it not for the fact that  
2 the Court wishes the defendant to be released in as promptly as  
3 possible. Upon release from imprisonment, the defendant shall  
4 be placed on supervised release for a term of five years on  
5 Count Two, and three years on Counts One and Five, all to run  
6 concurrently.

7 Within 72 hours of release from the custody of the  
8 Bureau of Prisons the defendant shall report, in person, to the  
9 probation office in this district. While on supervised  
10 release, the defendant shall comply with the standard  
11 conditions of supervised release in this district:

12 The defendant shall not commit another federal, state  
13 or local crime.

14 The defendant shall not possess a firearm or  
15 destructive device as defined in 18 U.S.C. Section 921.

16 The defendant shall refrain from any unlawful use or  
17 possession of a controlled substance.

18 The defendant shall submit to one drug test within 15  
19 days of release from imprisonment and at least two periodic  
20 drug tests thereafter as directed by the probation officer.

21 The defendant shall cooperate in the collection of DNA  
22 as directed by the probation officer.

23 I have already explained the reasons for the sentence.  
24 Does either counsel know of any legal reason why the sentence  
25 should not be imposed as I have so stated it?

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1 MS. CROSS-GOLDENBERG: No, your Honor.

2 MR. DEMBER: No, your Honor.

3 THE COURT: I will order the sentence to be imposed as  
4 I have so stated it.

5 Mr. Egipciaco, you have the right to appeal the  
6 sentence. The notice of appeal must be filed within 14 days  
7 after the entry of the judgment so you should discuss this  
8 issue promptly with your lawyer. If you cannot pay the cost of  
9 appeal, you have the right to apply for leave to appeal in  
10 forma pauperis. If you request, the Clerk will prepare and  
11 file a notice of appeal on your behalf immediately.

12 Do you understand?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: The government has already moved to  
15 dismiss Count Three and the defendant agrees, right?

16 MR. DEMBER: Correct, your Honor.

17 MS. CROSS-GOLDENBERG: Yes, your Honor.

18 THE COURT: Okay. Count Three is dismissed on the  
19 motion of the government and that disposes of all of the  
20 counts, right?

21 MR. DEMBER: Yes, your Honor.

22 THE COURT: Okay. Anything further?

23 MR. DEMBER: No, your Honor.

24 MS. CROSS-GOLDENBERG: Not from us, your Honor.

25 THE COURT: I have signed the order that the

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1 defendant, having been sentenced to time-served, is hereby  
2 ordered released, pending those detainees, from the custody of  
3 the Bureau of Prisons and United States Marshal and I will give  
4 a copy to the marshal.

5 Anything further?

6 MS. CROSS-GOLDENBERG: Not from us, your Honor.

7 MR. DEMBER: No, your Honor.

8 THE COURT: Okay. Good morning, all.

9 MS. CROSS-GOLDENBERG: Thank you.

10 (Adjourned at 11:25 a.m.)

11 (Defense counsel present; time noted: 12:00 p.m.)

12 THE COURT: I don't see -- is the government here?

13 MS. CROSS-GOLDENBERG: The marshals have told us since  
14 it is resentencing that they will not release him from this  
15 building but they will bring him back to Brooklyn and in fact  
16 he may already be on the bus back to Brooklyn. But I just  
17 asked the Court's deputy if he could call down and ask them to  
18 hold him just in case.

19 I emailed Mr. Dember to let him know. If that would  
20 change the sentence the Court would impose in terms of it not  
21 making a difference if he got the 10 years, he has to go back  
22 to Brooklyn anyway, then we would be here to see the Court  
23 again --

24 THE COURT: My understanding -- maybe the prosecutor  
25 wants to make an appearance because I don't listen *ex parte*.

J945egiS

sentence

1                   MR. HOBSON: Yes, your Honor. Adam Hobson for the  
2 government.

3                   THE COURT: Fine. And the defendant isn't present  
4 because he is not here and defense counsel waives his presence.

5                   Defense counsel waives the defendant's presence?

6                   MS. CROSS-GOLDENBERG: Yes, your Honor.

7                   THE COURT: My understanding is once the proceeding is  
8 over the Judge, under the rules, can't change the sentence.

9                   Right? And my sentencing proceeding was over. I just had  
10 another proceeding. I am certainly happy to make any  
11 intervention with the Marshal service and the Bureau of Prisons  
12 to have the defendant released in the normal course from this  
13 building, if that's the way in which it is normally done, and  
14 I'm sure Mr. Dember would intercede to the same effect.

15                   MS. CROSS-GOLDENBERG: Yes, your Honor.

16                   I was just -- to the extent that the sentence seemed  
17 to be based on the representation of the marshals that one way  
18 he would be released from here, the other way he would be  
19 released from Brooklyn --

20                   THE COURT: No, it wasn't just released from Brooklyn.  
21 My understanding was they would have to calculate his time and  
22 there would be the division of the Bureau of Prisons that makes  
23 those calculations for a release as opposed to an order from  
24 the Court that says released with time-served.

25                   MS. CROSS-GOLDENBERG: Right.

J945egiS sentence

THE COURT: And I thought, again I had thought that those calculations are not made in Manhattan or Brooklyn but rather by another office of the Bureau of Prisons. Yes, I want to see the defendant released as soon as possible, if from this court or from the MDC. And, I am sure that Mr. Dember would want to see the same thing. So, if there is anything that I can do by way of order to effectuate that he will be pleased to do that.

MS. CROSS-GOLDENBERG: Thank you, your Honor. We appreciate that.

I don't know if Mr. Fletcher went back to see if he is still here or if there is anything that can be done with the marshals. If there is, then we will let the Court know.

THE COURT: Okay.

MS. CROSS-GOLDENBERG: And I will get Mr. Dember back over here.

THE COURT: Okay. I am here through -- a long time.

MS. CROSS-GOLDENBERG: Thank you, your Honor. I appreciate it.

THE COURT: Okay.

I thank the government prosecutor for standing in.

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